

REMARKS

Claims 6-33 and 36-41 are pending, with claims 1-5, 34, and 35 having been canceled without prejudice, and claim 12 being withdrawn in view of the Species Election Requirement mailed August 14, 2006, to which this paper is responsive. No claims are amended.

Examiner had previously entered a restriction requirement (see the Official Action mailed June 20, 2006) between apparatus and method claims. Applicant elected, with traverse, the apparatus claims and withdrew the method claims. Examiner has made that requirement final, and so Applicant has now canceled the unelected method claims without prejudice to seeking claims directed to the subject matter thereof in another filing.

Now, Examiner has interposed a species election requirement identifying three alleged species, namely, Group A (identified in relation to Figs. 2A-2E), Group B (identified in relation to Fig. 3) and Group C (identified in relation to Figs. 4A and 4B).¹ **Applicant elects, with traverse, Group A and submits that claims 6-11, 13-33, and 36-41 are readable thereon, with claims 6, 20, 33, and 36 being generic.** In other words, all but claim 12 of the pending claims are submitted to be readable thereon, which casts doubt on the viability of the species election requirement, as will now be explained.

Examiner did not identify the various alleged differences between the species. Applicant notes that the specification explains that there is substantial overlap in certain aspects thereof. For example, all of the Groups have a securing element or means for securing as called for in independent claims 6, 20 and 36, with Groups A and B using

¹ With all due respect, Applicant submits that Examiner should have made the species election requirement at the same time the restriction requirement was made, rather than delay prosecution of this case still further, and add to the costs for Applicant to undertake prosecution. This case is now nearly 2 and a half years old, and Examiner has yet to undertake a review of the patentability of the claims. That is simply unfair.

adhesive and Group C using a mechanical closure strip. Similarly, all of the Groups provide the possibility of a notch such as for a volume control as called for in independent claim 33.² Still further, Groups A and B both include a flap portion of the cover that carries tape-covered adhesive to close the flap down around the cord. As a result, the primary difference Applicant notes between the three alleged species is that Group A has a perforated flap with adhesive, Group B has an unperforated flap with adhesive, and Group C has no flap at all but has a mechanical closure strip. Thus, while claim 12 is specific to Group C, is it submitted that all of the other, pending claims read on Group A, if not also Group B in many circumstances.

In the context of the foregoing, it is respectfully submitted that Examiner will necessarily have to undertake a search that covers, in effect, all of the species, for reasons given above. As the search effort would thus be the same, the Office resources would be sufficient to address all issues in one case, rather than place Applicant at risk of having to endure the costs of multiple filings and, if successful, multiple patents. The species election requirement is thus traversed for at least the above-stated reasons. Applicant expressly makes no admission, however, that art teaching one species would render obvious claims to any other species. Thus, Applicant does not here take a position, or make any concession, as to whether or not the species are patentably distinct, nor is it seen necessary to take any such position or make any such concession.

Nonetheless, to be responsive and to move prosecution forward, Applicant has elected what Examiner has identified as Group A, without waiver of the right to seek claims

² In an effort to avoid further waste of time and resources, Applicant advises that, should Examiner decide to enter a further restriction or election requirement between claims having a securement feature (as represented by independent claims 6, 20 and 36) and the notch feature (as represented by independent claim 33), Applicant elects the claims to the securement feature, which would result, potentially, in withdrawal of at least independent claim 33.

directed to what Examiner has identified as Group B and/or Group C in a subsequent or further filing.

Conclusion

In view of the foregoing, Applicant requests withdrawal of the species election requirement and, in any event, elects Group A, and submits that claims 6-11, 13-33, and 36-41 are readable thereon, with claims 6, 20, 33, and 36 being generic. Applicant respectfully solicits examination on the merits and a formal Notice of Allowance at the earliest opportunity. If any issues remain, Examiner is respectfully asked to telephone undersigned attorney in an effort to promptly resolve same, especially since this case is now over two and a half years old, and has yet to have the benefit of an examination on the merits.

No fee is believed due for this paper. If any fee is due, please take this as authorization to charge same to our Deposit Account 23-3000.

Respectfully submitted,

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